

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1913 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

PURSOTTAM FARMERS CO.OP COTTONGINNING & PRESSING SOCIETY LTD

Versus

STATE OF GUJARAT

Appearance:

MR KS NANAVATI for Petitioner

MR. MA BUKHARI AGP for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 25/02/2000

ORAL JUDGEMENT

Learned advocate Mr. Thakkar is appearing for
Mr. K.S.Nanavaty, learned advocate appearing for the
petitioner. Learned AGP Mr. Bukhari has appeared for
the respondents. In this petition, the petitioner

challenges the order of the Collector (Electricity Duty) dated 26th July, 1985 wherein the Collector has discontinued the exemption from electricity duty which was given earlier and the appellate order dated 3rd March, 1987 passed by the Deputy Secretary, Government of Gujarat whereby the appellate authority has rejected the appeal of the petitioner filed against the said order of the Collector and has confirmed the order of the Collector (Electricity Duty)

2. The facts leading to the filing of the present petition are as under :

The petitioner is a cooperative society of the farmers carrying on the business of collecting cotton and thereafter doing ginning and pressing and thereafter preparing oil and thereafter purchasing and selling the said oil to their members. The petitioner started the business from April, 1982 and since then, the petitioner is carrying on business of cotton seeds and cotton seed expeller oil and cotton seed oil cake and soft stone. The petitioner is carrying on the business of cotton ginning and pressing. The petitioner has obtained sales tax number from 1.1.1977. The petitioner has obtained 400 kva from the GE Board. That the petitioner has put plant and machinery worth Rs. 18.27 lacs and constructed building worth Rs. 8.60 lacs and incurred capital expenses in terms of land and others including capital investment comes to the tune of Rs. 22.87 lacs. That in view of proviso 3(II)(b), the petitioner filed an application for getting certificate regarding eligibility of exemption on the grounds that the petitioner is a new industrial undertaking and a certificate to that effect was issued by the General Manager, DIC, Surat certifying that the petitioner is an industrial undertaking entitled to exemption from the payment of electricity duty under clause 7 of sub section (ii) of section 3 of the Electricity Act from 1.4.1982 to 30.4.1987. The petitioner society was enjoying the said exemption from 1.4.1982. It is the case of the petitioner that the Administrative Officer of Electricity Duty Ahmedabad by his communication dated 26.10.1985 informed the petitioner that the undertaking of the petitioner society is a commercial undertaking prior to the amendment in the Electricity Duty Act from 11.10.1983 and, therefore, the petitioner society is not entitled to exemption from electricity duty. In response to the said communication, the petitioner addressed letter dated 29.8.1985 to the Collector (Electricity Duty) for obtaining exemption and requesting him to reconsider his communication dated 26th July, 1985. Thereafter, the

petitioner was addressed a letter by the Collector (Electricity Duty) by his communication dated 15.10.1985 informing inter alia that in view of the amendment in the Electricity Duty Act from 11.10.1983, the undertakings which are carrying on job work are also industrial undertakings. The Collector also held that the certificate regarding exemption can be continued in view of sec.3(2)(AA)(a) of the Electricity Duty Act. However, the Collector observed that there are undertakings which were not eligible for exemption but in view of the mistake in interpretation of law, exemption was granted which cannot be continued. Feeling aggrieved by the aforesaid order of the Collector, the petitioner preferred appeal before the Deputy Secretary, Industries, Mines and Energy Department contending inter alia that the certificate of exemption obtained by the petitioner cannot be discontinued by the Collector. It was also contended in the said appeal that the order of the Collector is bad in law and it violates the principles of natural justice. Said appeal was rejected by the Deputy Secretary, Government of Gujarat vide his order dated 3.3.1987 on the ground that the society was not eligible for exemption prior to the amendment and, therefore, cannot avail of the benefit under the Amended Act though Amendment Act provides if it is established after the said date and, therefore, the appeal was rejected by the appellate authority. Both the said orders i.e. original order and the order passed by the appellate authority confirming the original order have been challenged by the petitioner before this court in this petition.

This Court has admitted this petition on 8.2.1988 and subsequently, considering the reply filed by the respondent No. 2, interim relief has been refused by this court on 22.11.1988.

In this matter, respondent no. 2 has filed affidavit in reply to the present petition and has also produced the notification dated 30.8.1983. The petitioner has also filed affidavit in rejoinder to the affidavit in reply filed by respondent NO. 2.

I have heard the learned advocates for the parties. The learned advocate Mr. Thakkar appearing for the petitioner has mainly submitted that before cancelling the exemption already granted to the petitioner society on the ground that the petitioner society is covered under the Old Act as a commercial undertaking and, therefore it is not entitled to exemption of the electricity duty, the petitioner has not been afforded any opportunity whatsoever by the respondents. He has

submitted that it is an order which is having adverse effect and civil consequences against the petitioner society and, therefore, the respondents ought to have given fair opportunity to the petitioner to make his submissions before passing such order. However, same has not been given and, therefore, the order passed by the competent authority is violative of the principles of natural justice and is, therefore, liable to be quashed and set aside on that ground alone. He has submitted that even the respondents have also not disputed that the petitioner was not afforded the reasonable opportunity before passing the said order. He has further submitted that since the appellate authority has not considered this submission of the petitioner in the appeal, the order passed by the appellate authority is also illegal and bad in law and is liable to be quashed and set aside.

As against this, Mr. Bukhari, learned Assistant Government Pleader appearing for the respondents has submitted that the respondent NO.2 has filed detailed affidavit in reply to the present petition. He has submitted that the Amended Act has come into force from 11.10.1983 and the undertakings doing the job work have been, for the first time, classified as industrial undertakings. According to him, the undertakings doing work on job basis prior to 11.10.1983 were not classified as industrial undertaking and the society was then commercial undertaking and as such, is not entitled to exemption from the payment of electricity duty which was available to the new industrial undertaking and, therefore, the order dated 26th July, 1985 withdrawing the exemption certificate is quite legal and valid order and the same does not require any interference of this court. He has further submitted that the contentions raised by the petitioner in the appeal were properly considered by the appellate authority while rejecting the appeal and therefore, this petition is required to be dismissed with costs.

I have considered the submissions made by the learned advocates for both the sides. It is clear that the petitioner was enjoying the exemption benefit pursuant to the certificate dated 11th March, 1985 with effect from 1.4.82 to 30.4.1987. Pursuant to the said certificate, benefit of exemption was granted to the petitioner considering it an industrial undertaking. Pursuant to the said certificate, the petitioner was exempted from payment of electricity duty for the period from 1.4.1982 to 30.4.1987. I am of the view that the withdrawal of such benefit was having adverse effect upon

the petitioner requiring the petitioner to pay an amount exceeding Rs.4,36,000/- as stated by the petitioner in the memo of petition. Therefore, I am of the view that the withdrawal is having direct impact and is also having adverse effect and civil consequences against the petitioner and, therefore, the respondent No. 2 was required to give reasonable opportunity to the petitioner society before passing such order of withdrawal of exemption from payment of electricity duty. The respondent NO. 2 has failed to observe minimum bare requirement of the principles of natural justice while passing the impugned order of withdrawal of exemption from payment of electricity duty. As per the principles laid down by the apex court in case of Gajanan L. Pernekar versus State of Goa and another reported in 2000 SCC (Lab. & IC), page 57, when the administrative action and/or action is having adverse effect and consequences, in such circumstances, principles of natural justice are required to be observed strictly which, in this case, have not been followed by respondent no. 2 and this aspect has not been properly considered by the appellate authority while rejecting the appeal preferred by the appellate authority. In case of Gajanan, supra, it has been held that the benefit which was granted in favour of a person could not have been taken away from such a person without affording him any opportunity of hearing. It has been held that there has been breach of the principles of natural justice and violation of fair play in action. In the said decision before the apex court, the appellant was working as a confirmed head master of private high school and the school was taken over by the Government and, thereafter, the appellant was appointed as a head master of the Government school by order dated 13th June, 1974. The appellant represented against his appointment as a head master of the middle school and ultimately, by order dated 16.2.1974, the appellant was absorbed as a head master of the Government High School. Subsequent thereto, vide order dated 21/22-1-1999, the respondents recalled the order dated 16.2.1974 by which the appellant was treated as a head master of the high school. In light of these facts, it was held by the apex court in the said decision that the manner in which the order dated 21/22-1-1999 came to be made was improper. The appellant was denuded of the benefits of the order dated 16.2.1974 unheard and there has been breach of the principles of natural justice and fair play. The apex court held that the order dated 16.2.1974 was recalled without giving any opportunity to show cause against it. The apex court has held in the said decision that the benefits of the order dated 16.2.1974 could not have been taken away from the appellant without affording him any

opportunity of hearing. In the instant case also, the petitioner was denuded of the benefits of the certificate of exemption from payment of electricity duty without affording him any opportunity of hearing and without enabling him to show cause as to why such action should not be taken. Therefore, according to my view, the order in question i.e. order dated 26th July, 1985 is in breach of the principles of natural justice and fair play and could not have been passed without affording an opportunity to show cause against it. Same is, therefore, liable to be quashed and set aside.

The order passed by the appellate authority dated 3rd March, 1987 is also required to be quashed and set aside since the appeal has been rejected on the ground of limitation and also in view of the fact that the same has been passed without considering the submissions made by the appellant in appeal. Thus, the petition is required to be allowed on that ground alone, without obswerving anything on merits of the matter. From both the sides, submissions were made on merits. However, since I am allowing this petition only on the ground of violation of the principles of natural justice and fairplay in action, I am of the view that this Court should not discuss the merits of the matter in either way and it will be open for the competent authority of the respondents to pass appropriate orders in accordance with law after complying with the principles of natural justice, if they think it necessary.

In view of the above discussion, this petition is allowed. The order dated 26th July, 1985 passed by respondent No. 2 and the order dated 3rd March, 1987 passed by the appellate authority, both are hereby quashed and set aside and it will be open for the respondent authority to initiate appropriate proceedings in accordance with law for withdrawing exemption from payment of electricity duty and to pass appropriate orders in that regard after following procedure established in law and affording reasonable opportunity of hearing to the petitioner against the action proposed. Rule is made absolute in terms indicated hereinabove with no order as to costs.

25.2.2000. (H.K.Rathod,J.)

Vyas